

ORIGINAL

Decision No. 35778

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of W. H.)
 PIMENTEL, d.b.a. NORTH SACRAMENTO STAGE)
 LINE and FAIR OAKS STAGE LINE, to sell,)
 and A. J. (BERT) CHAPIN, to purchase, an)
 automobile passenger stage line for the)
 transportation of passengers between)
 Sacramento, McClellan Field, Rio Linda,)
 and intermediate points, and for the) Application No. 25202
 transportation of passengers, baggage and)
 shipments of express weighing not in ex-)
 cess of one hundred pounds on passenger)
 vehicles only between Sacramento and)
 American River Hydroelectric Damsite and)
 the intermediate points of "H" Street)
 Bridge, Del Paso, Carmichael, Fair Oaks)
 and Orangevale.)

BY THE COMMISSION:

O P I N I O N

By Decision No. 35675, dated August 11, 1942, in Application No. 25106, the Commission granted to W. H. Pimentel a certificate of public convenience and necessity authorizing the establishment and operation of a passenger stage service in general between Sacramento, North Sacramento, Rio Linda, McClellan Field and intermediate points over various routes, and between Sacramento, Fair Oaks and a project on the American River known as the American River Hydroelectric Damsite and certain intermediate points. That certificate was granted in lieu of any and all passenger stage operative rights theretofore granted to or acquired by applicant Pimentel between those points. The old operative rights were revoked and annulled.

In the above-entitled application, as amended, W. H. Pimentel asks permission to sell to A. J. (Bert) Chapin that

operative right, 14 passenger stages having a seating capacity varying from 21 passengers to 41 passengers, garage equipment, office supplies and equipment, and lots 14 and 15, Block 41 of North Sacramento Subdivision No. 8, according to the official plat thereof filed in the office of the Recorder of Sacramento County, California, on March 26, 1913 in Book 13 of Maps, Map No. 49; also that portion of Lot 16, Block 41 of North Sacramento Subdivision No. 8, according to the official plat thereof filed in the office of the Recorder of the County of Sacramento on March 26, 1913, in Book 13 of Maps, Map No. 49, as described

(1)
in the margin. A six-room dwelling of wooden frame construction, a corrugated iron garage and two small wooden frame out-buildings are situated on Lots 14 and 15, and a three-room dwelling of wooden frame construction now used as an office is situated on Lot 16. A more detailed description of said properties is set forth in Exhibit A, which is an agreement, dated August 1, 1942, defining the terms and conditions of the sale.

A. J. (Bert) Chapin requests authority to purchase the foregoing described operative right and property and agrees to pay therefor the sum of \$71,500. The consideration is payable as follows:

(1) "Beginning at the most Westerly corner of said Lot on the South line of Sonoma Avenue as shown on said plat; thence South 89° 55' East along the North line of said Lot and the South line of Sonoma Avenue, a distance of 105.50 feet; thence South 44° 55' East 23.20 feet; thence South 45° 05' West parallel to the Southeasterly line of said Lot, a distance of 74.60 feet to the Westerly line of said Lot; thence North 44° 55' West along said line, a distance of 97.80 feet to the point of beginning."

- a. \$15,500 by and through the assuming by the purchaser of the indebtedness of the seller to the Bank of America National Trust and Savings Association, North Sacramento Branch, under a note dated February 27, 1942.
- b. \$2,000, approximately, by and through the assuming by the purchaser of the balance due Crown Body and Coach Corporation from the seller under the terms of a conditional sales contract, dated June 20, 1940, to purchase one auto stage, Model 09-B, Motor No. 99T-109357.
- c. \$5,400 to be placed in escrow with the Bank of America National Trust and Savings Association, North Sacramento Branch, and delivered to seller upon receipt by the bank of a certified copy of an order of the Railroad Commission authorizing the sale of the properties.
- d. \$5,400 to be paid on January 2 of each year from 1943 to 1951, both inclusive.

A. J. (Bert) Chapin asks permission to execute a deed of trust to secure and insure his faithful performance of the covenants contained in the agreement of August 1, 1942. The deed of trust will be a lien on the real property heretofore described. A copy of the same is filed in this proceeding as Exhibit G.

It is of record (Exhibit E) that W. H. Pimentel on February 27, 1942, without permission from the Commission, issued to the Bank of America National Trust and Savings Association, his installment note for the sum of \$18,014.94 and executed a chattel mortgage to secure the payment of the note. The chattel mortgage is a lien on five motor coaches. The note is payable as follows: \$514.94 on March 25, 1942 and \$500 in equal successive installments, commencing April 25, 1942. In issuing the note and executing the chattel mortgage, applicant has not complied with the provisions of Sections 51 and 52 of the Public Utilities Act.

On or about June 20, 1940, W. H. Pimentel executed, without permission from the Commission, a conditional sale contract, (Exhibit F) covering the purchase of a new Ford motor coach from Crown Body and Coach Corporation. The payments under this contract extend beyond twelve months after its date. We regard the contract as an evidence of indebtedness subject to the provisions of Section 52 of the Public Utilities Act.

In our opinion the conditional sales contract, the chattel mortgage, and the note referred to herein, are void. We will, therefore, not authorize their assumption by A. J. (Bert) Chapin. He or W. H. Pimentel should either pay the balance due the Bank of America National Trust and Savings Association, North Sacramento Branch, and Crown Body and Coach Corporation or execute new instruments. The order herein will authorize either of them to execute the same.

Exhibit A in the instant application shows that 14 auto stages are to be transferred. Exhibit A in Application No. 25241⁽²⁾ shows that 5 such stages have been fully depreciated but have been reconditioned and entered on W. H. Pimentel's books at an aggregate replacement value of \$5,440. The original cost of the remaining 9 stages is reported at \$47,999.16 and the accrued depreciation thereon at \$12,216.89, leaving a net cost of \$35,782.27. Adding to this amount the \$5,440 results in a book value of \$41,222.27, as of June 30, 1942, for the 14 stages. The cost of the land and buildings is reported at \$12,376.52.

(2) Application No. 25241 was filed by W. H. Pimentel September 1, 1942 seeking authority to increase fares between some of the points served.

To the land and buildings, applicants have assigned a value of \$8,500. The cost of materials, supplies, and office furniture is reported at \$971.50. Exhibit A shows no value assigned to operative rights though applicants in their petition allege that such rights have a value of \$13,000. This is nothing more than the difference between the purchase price and the value assigned by applicants to the tangible properties. There is no support whatever to the allegation that the \$13,000 represents the value of the operative rights. The aggregate depreciated value of the tangible properties is reported at \$50,693.77.

If A. J. (Bert) Chapin acquires the properties herein mentioned, he should obtain from W. H. Pimentel the books of account, wherein the cost of such properties and the accrued depreciation and any adjustments thereof are recorded, or in lieu thereof a complete transcript of such costs and depreciation accruals, together with any adjustments that may have been made from time to time.

The Commission has heretofore placed W. H. Pimentel, as well as other stage and truck operators, on notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. The certificate of public convenience and necessity herein authorized to be transferred was granted subject, among others, to the following condition:

"W. H. Pimentel, his successors and/or assigns shall never claim before this Commission or any court or other public body, a value for the authority hereby granted in excess of the actual cost thereof."

Section 52(b) of the Public Utilities Act reads in part as follows:

"The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right;..."

The Commission is here asked to authorize the execution of an agreement which provides for a payment in excess of the cost of the properties to the seller. This excess payment should not be recorded by A. J. (Bert) Chapin as the cost of the operative rights or the value of such rights.

O R D E R

The Commission having considered applicants' request and it being of the opinion that this is not a matter on which a hearing is necessary, and that this application should be granted subject to the provisions of this order, therefore,

IT IS HEREBY ORDERED as follows:

(1) W. H. Pimentel may sell to A. J. (Bert) Chapin and said A. J. (Bert) Chapin may acquire the passenger stage operative right created by Decision No. 35675, dated August 11, 1942, in Application No. 25106, and thereafter operate thereunder, and the transportation properties described in the agreement filed in this proceeding as Exhibit A, which agreement said W. H. Pimentel and said A. J. (Bert) Chapin may execute.

(2) W. H. Pimentel and/or A. J. (Bert) Chapin may, on or before November 15, 1942, issue an installment note and execute a chattel mortgage in substantially the same form as the installment note and chattel mortgage filed in this proceeding as Exhibit E. If said note is issued by said W. H. Pimentel, said A. J. (Bert) Chapin may assume the payment of the balance due on such note.

(3) W. H. Pimentel and/or A. J. (Bert) Chapin may, on or before November 15, 1942, execute a conditional sale contract in substantially the same form as the conditional sale contract on file in this proceeding as Exhibit F. If said conditional sale contract is executed by said W. H. Pimentel, said A. J. (Bert) Chapin may assume the payment for the balance due thereon.

(4) To secure the performance of the covenants and agreements contained in said Exhibit A, A. J. (Bert) Chapin may execute, on or before November 15, 1942, a deed of trust in substantially the same form as the deed of trust filed in this proceeding as Exhibit G.

(5) The authority herein granted will become effective when applicants or either of them have paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is Sixty-seven Dollars (\$67.00).

(6) The authority herein granted is subject to the provisions of Section 52(b) of the Public Utilities Act, and further to the condition that A. J. (Bert) Chapin, his successors and assigns shall never claim before this Commission or any court or any other public body, a value for said operating rights, or claim as the cost thereof an amount in excess of that paid for

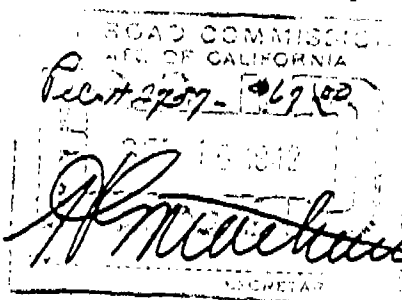
said rights by those to whom said rights were originally granted.

(7) The authority herein granted to execute a deed of trust, a chattel mortgage, and a conditional sales contract is for the purpose of this proceeding only and is granted only insofar as this Commission has jurisdiction under the terms of the Public Utilities Act, and is not intended as an approval of said deed of trust, said chattel mortgage and said conditional sales contract as to such other legal requirements to which they may be subject.

(8) If A. J. (Bert) Chapin acquires the aforesaid properties, he shall file with the Railroad Commission within thirty (30) days after the acquisition of said properties a copy of the note issued, a copy of the deed of trust, a copy of the chattel mortgage, and a copy of the conditional sales contract executed under the authority herein granted, also a copy of the agreement under which he has acquired said properties.

(9) Applicants shall comply with the rules of the Commission's General Orders Nos 79 and 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public.

Dated at San Francisco, California, September 15, 1942.



Handwritten signatures of Justus T. Baerlein, J. H. Baker, Francis J. Hawkins, and Richard L. Clarke, with the printed title 'COMMISSIONERS' below them.